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**Subject: Native Ruler and the Colonial  
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the Age of Sakthan Thampuran**

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## **Native Ruler and the Colonial Power: Judiciary of Cochin in the Age of SakthanThampuran**

The legal history of the Cochin state can be classified under three heads. Pre-British era, era of coexistence between the British and Indian laws and colonial era. It may be difficult to trace back the Pre-British era, but it can be understood that the legal system was revolved around caste and customs. Morality, born out of casteism, formed the base of the justice system and those who violated such customs were given punishments accordingly. Therefore, social sanctions and punishments created a social order based on fear.

In the princely state of Cochin, King was a hereditary monarch and the final authority of law. He was assisted and restricted by the “Five Great Assemblies” composed of the representatives of people, priests, physicians, astrologers and ministers.<sup>1</sup> The king was the supreme head of civil and criminal matters. The role of SakthanThampuran in the judicial administration of Cochin was such an episode in the Pre-British period. Hewas the ruler of Cochin from 1791 to 1805. His real name was RamavarmaKunjipillaThampuran. He ascended the throne when the Cochin made a treaty with the British East India Company. He was very powerful and adopted hard measures for the administration of justice. Even though he followed the code of ethics of administration his measures sometimes were very cruel and against the common justice. In the initial years he had good relationship with the British East India Company but the company became doubtful regarding the various deeds of SakthanThampuran. Though he passed away in 1805, the real basis of the early part of British judicialisation of Cochin was not much different fromSakthnThampuran.

After the treaty of *SreerangaPattanam*, Cochin threw off its allegiance to Mysore and entered into a treaty with the British. A commission was appointed to increase the income from the new princely states known as Malabar Commissioners appointed by the Governor General Cornwallis. The members of the committee were consisted of the representatives of Bombay, Bengal and Madras. This committee with the rights conferred upon by the Governor General, sent a circular to the rulers of the local kingdoms including Cochin in 1792. The company officials demanded a detailed and specific reply from the king. It was the first step of the company to understand the legal practices and punishment systems that existed in the state of Cochin. The Judicial system in the eyes of the British was a tool to generate money. But with the limited understanding the colonizer was aware that there was no clear cut laws

and code of ethics in the state. The legal system which was mixed up with the customs and religions was too complicated for the colonizers to understand. These questions to the king can be treated as their first step to understand the judicial system that existed in Cochin during this period.

In 968 *MEMedam* 12 SakthanThampuran replied to the committee regarding the judicial administration of the state. From the reply to the committee it is evident that SakthanThampuran it is evident that he had applied harsh measures in the judicial administration of the state. It should be noted that this was not a period of proper legal codes and judicial system like that of the modern era. Still SakthanThampuran claimed that his judicial system was based on *Desamaryada*. One interesting thing in his reply is the emphasis upon trail, proof, witnesses and special opinion of the jury. The reply of the king also affirmed his belief in the *Varna system* and the hegemony of the Brahmins existed in the state.

### **Texts and Codes in Practice**

Puthezhath Raman Menon in his Book *SakthanteThiranjeduthaBharanarekhal* elaborately discusses the administrative theory of the Kings of Cochin. He had shown the tendency of boasting the ruler throughout this work. He explains a powerful king should rule the state as per the *NeethiSastras* such as *SukraNeethi*, *DandaNeethi*, and *Agni Puranokthithi*. The ruler should try his best in the impartial administration of justice. His judgments closely resembled the principles embodied in the *Varnasrama Dharma* and *YajnavalkyaSmrithi*. The king was the foundation of justice, but in its administration he was assisted by the ministers. It was based on the legal codes existed during this period. Even though he discusses about the administrative capability of SakthanThampuran, it portrays the general administrative tendency of the monarchs. The Monarchical rule of Cochin was based on *SukraNeethi*<sup>ii</sup>. This is an old book consisting of the art of state craft ship. The code tells that protecting the universe and slaying the enemies are the primary duty of the monarch. Fear was the reason why the subjects obeys the king that's why generating fear among the people follow the path of *Dharma*. Even the ministers were not exempted from crimes, they were punished publically. The king should be the protector of the marginalized and the orphans.

Another text followed by the rulers of Cochin was *Agnipuranothi* It tells that “a ruler should have the characteristics of prudent thinking of a storke, Courageous like the lion violent like the wolf sudden action like the Rabbit and inflict heavy load upon the prey

like the pig. Flexible and structured like the peacock and produce well sound like the Cuckoo and intelligent like the Crow”. In *Agnipurānokthi* also describes that the king should appoint spies in order to collect the information from the people for the flawless administration of justice. *DandaNeethi*<sup>iii</sup> is explained as the fear of punishments among the subjects by which his subjects should fear their ruler. “With untiring energy and vigilance, he attended to every detail of the administration himself. He hated corruption to such an extent that he did not hesitate to confiscate property of corrupt officers in addition to the harsh punishment meted out to them. Special officers were appointed to watch closely and report on the condition of all government servants in each Taluk. Offences against life and property were put down with an iron hand and the punishments prescribed were shockingly severe”<sup>iv</sup>

The severe punishments of SakthanThampuran were based on various legal codes of state administration. SakthanThampuran was fascinated by *SukraNeethi*, the rules and procedure for monarchical rule in Cochin. In the scriptural tradition, *TheSukraNeethi* is recognized as Magnum opus of Statecraft ship<sup>v</sup>. In *SukraNeethi* the King is considered as the representative of god on earth, but he is not having any divine right to arbitrary exercise of power which have to be governed by Dharma<sup>vi</sup>. The highest obligation of the king to the society to which he belongs, according to *Sukra* is the protection of the people and the punishment of the wicked<sup>vii</sup>. Apart from delivering justice spreading culture, education and other benevolent works of public utility, the top most duty of the king is to fight bravely in the battle field against the enemy<sup>viii</sup>. He was the Slayer of Foes emphasized by *SukraNeethi*. People were very obedient to the monarch because of the fear generated by the king through his harsh measures. It seems that SakthanThampuran was fascinated by the text of *SukraNeethi* and he practiced the art of statecraft ship embodied in *SukraNeethi*.

Generating fear among the bureaucracy was a technique used by the SakthanThampuran for the smooth running of the judicial administration. It is evident from various records that there were staunch actions against coercion. Bribery was strictly prohibited. No one was permitted to hide the truth and harboring a culprit was a crime. The orphans, handicapped, blind and the deceased were to be treated well. *SukraNeethi* says that king should be well versed in *Neethi Sara*. Without the permission of the king the officers can't act accordingly. *Thitturam* or official document was essential for proclamations. It was applicable both for the king and the officers. SakthanThampuran had an opinion that any disputes should be settled within their own territory and elderly members were advised to settle the disputes. The king followed the principle of *NeethiSastra*, which says that the king

should be obedient to those who were more powerful than him, in friendly relation with the equals and should fight against the weak.

The Rajah exercised *DandaNeethi* which imparted severe punishment for every wrongs committed by the wrong doer. People were fearful about him. But it has the backing of *Sastras* as well. The amature Historians picturized Sakthan as an impartial foundation of justice but many of the descriptions seems exaggerated. Every punishment of SakthanThampuran was based on *Sastras*. Sakthan gave capital punishment to those who disrespected women. During his time impartiality of justice was assured, that is, irrespective of whether the culprit belonged to *Nair* or *Brahmin community* they were given equal punishments according to the *Sastras*.<sup>ix</sup> The punishment system was too rude that the guilty was punished with imprisonment in addition to stripes. He directly confiscated the property of the corrupt officials to the central treasury<sup>x</sup> According to him, if a thief had stolen the property with his hand, the hand should be chopped. Attempts of rape, poisoning and attempt of murder with a weapon should be given capital punishment. The corrupt officials, who were responsible to protect the people, should be expelled from the country after confiscating their property<sup>xi</sup>.

### **Crime and Punishments**

During the period of SakthanThampuran *Desavazhis* and *Naduvazhis* lost their powers. The king concentrated all the powers in his hands. He declared *HukkumNamas* and punished according to this. The role of the *Desavazhis* was taken over by the *Pravarthiyar* and the *Naduvazhis* by the *Karyagars*. Though SakthanThampuran was the last word in justice during this period the judicial, revenue and the police functions were done by the *Karyagars*. *Trail by ordeal* and cruel practices like *Kaimukku* were less common. The judges were wise and prudent. They handed over the details of the judgment to the king in serious matters. In the case of capital punishments, SakthanThampuran maintained a special jury of judges and officers. There was the practice of *Kolachoru*<sup>xii</sup> for the criminals waiting for capital punishment. The punishment clearly declared in the *Hukkumnamas*.

Refusal to repay debt on time was a crime. Repayment on time was considered as a *Nattumaryada* and they used *chit* for accounting this. Denial of the repayment by the debtor was also considered as a sin. If the debtor committed such a sin, he being a sinner had to take a rebirth for the repayment.<sup>xiii</sup> People kept their words and if they didn't, it was considered as

a breach of contract. The normal rate of interest during this period was one percent for hundred. There was no practice of compound interest.

Adultery was considered a heinous crime during this period. Chastity and morality was valued with high esteem. Out casting was the punishment for adultery.<sup>xiv</sup> The properties of the prostitutes were handed over to the *Pandaras* or the government<sup>xv</sup>. The role of religion can be well understood by the practice of *Smarthanvicharam*. It was a case of sexual misconduct committed by a woman. The caste assembly had a major role in conducting enquiry. If the suspicion persists even after the enquiry, the matter was reported to the *Rajah*. With the permission of the Raja the *Smartha* of the suspected lady was conducted in a cruel manner. If found guilty, she had to reveal the name of the persons involved otherwise the members of the family prostrate before the accused for the wrong they had committed<sup>xvi</sup>. This ceremony was called *Kshamanamaskaram*<sup>xvii</sup>. As Cochin consisted of different communities based on their customs and usages there existed a wide variety of Practices. The Hindus, Mohammadens and Christians had different methods of dispute resolution mechanisms based on their own law. Different caste also exercised their practice within their castes.

Theft was also considered a serious crime. Recovery of the lost movable property was the first concern and the punishment of the wrongdoer was secondary. Sometimes even the immovable property was taken to the government in order to compensate the loss. So pecuniary punishments were inflicted upon the thief. There was no imprisonment for theft. Capital punishment was given for commission of crimes like Killing of *Brahmins*, killing of cow, rape, murder and acts against State.<sup>xviii</sup> Women and *Brahmins* were exempted from capital punishment. The plaintiff should prove the case before the representative of the king. If the case was a manipulated one the punishment would be severe. *Naduvazhis* were generally exempted from punishments<sup>xix</sup>.

The punishments varied according to the caste and social hierarchy. The punishments were based on the *Vedas* and *Smrithis*. *Brahmins*, *Khatrias*, *Vysyas* and *Sudras* had different punishments for the same offence. For instance, if a *Brahmin* was hurt by a *Khatriya* and a *Vysia*, the body part by which he inflicted the injury should be amputated. If a *Sudra* hurt a *Brahmin* he should be killed by tightening him with the leg of a Buffalo and riding the Buffalo until his death. If a lower caste man sat with a higher caste, he was severely punished. Theft was treated as a heinous crime and the punishment was severe for the *Sudras* and lesser for the higher castes. Sometimes *Brahmins* were exempted from punishment for

minor theft but it was not so in the case of lower castes. According to the available sources SakthanThampuran took harsh measures in the cases related to environment. Fine was imposed to those who cut trees without the permission of the officials. If someone tried to divert the course of a river they should also be fined. Those who killed the cattles should be amputated<sup>xx</sup>. So administration by Sakthan was with a firm hand.

When the British came to India they realized that there were dispute resolution systems of various types in different geographical regions. Cochin was not an exception. As a result, a new hybrid legal system with the elements of English institutions, Hindu and Muslim elements began to emerge slowly in Cochin. As the British in Cochin well understood the judicial mechanism of SakthanThampuran, they never rejected the existence of judicial system in Cochin. However, they saw these as 'primitive' as it is contrary to the notion of 'Rule of law'. As per the needs of the changing times the colonizer gradually replaced the existing system of laws by the application of Legal pluralism and Rule of law.

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<sup>i</sup>TK Krishna Menon, *Progress of the Cochin state*, Cochin government Press Ernakulam, 1932 p.5

<sup>ii</sup> Law According to the Nature

<sup>iii</sup> Severe punishment for every wrongs committed by the wrong doer.

<sup>iv</sup> MR NarayanaPisharody, *The ruling family*, ED. TK Krishna Menon, *Progress of Cochin state* Op.cit p.15

<sup>v</sup> GurdeepKaur, *Political Ethics of Guru GranthaSahib*, Deep and Deep Publications, New Nelhi, 2000p.11

<sup>vi</sup> *Ibid* 13

<sup>vii</sup> MM Sankar, *Democratic Politics and Governance in India*, Deep and Deep Publications, New Nelhi, 2003p.73

<sup>viii</sup> *ibid*

<sup>ix</sup> Puthezhathu Raman Menon, *SakthanThamburan*, Calicut: Mathrubhumi Printing and Publishing Press, 1957, p. 506

<sup>x</sup> KP PathnabhaMenon, *Kochi Raja Charithram*, Mathrubhumi Printing and Publishing Limited, Kozhikode, 1996, p.725

<sup>xi</sup> *SaktanteThiranjeduthaBharanaRekhakal*, Central Archives, Trivandrum, pp.13-16

<sup>xii</sup> Puthezhathu Raman Menon, *Op.cit* p. 507

<sup>xiii</sup> *ibid* p.505

<sup>xiv</sup> *Ibid*

<sup>xv</sup> *Ibid* p.506

<sup>xvi</sup> A Madhvan, *The evolution of the judicial system in Kerala*, The Kerala Law Journal, Kerala law Publication, Ernakulam 1963 p.51 p.66

<sup>xvii</sup> C AchuthaMenon, *The cochin state Manuel*, Government Press Ernakulam, 1911p.442

<sup>xviii</sup> *SaktanteThiranjeduthaBharanaRekhakal*, Central Archives, Trivandrum

<sup>xix</sup> *ibid*

<sup>xx</sup> Puthezhathu Raman Menon, *Op.cit.*, p. 510